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NO. 85-272

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

ARROW NORTHWEST, INC., A TEXAS CORPORATION, JIM ANDERSON, SANDRA H. ARNOLD, ERWIN J. SUSMAN, CAROL ANDERSON, MARGO A. RUSS, MATT CLASEN, JOHN WILLIAM ALSUP, MARGARET ALSUP, J. GRADY ORR, WENDELL M. RUSS, J. R. (PEPE) BACHOR, ELLIS C. FANCHER, ROBERT C. GREEN and KATHRYN JACOBS,
Petitioners

v.

GREATER HOUSTON TRANSPORTATION COMPANY D/B/A YELLOW CAB COMPANY AND THE CITY OF HOUSTON,
Respondents

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a municipal airport taxicab service concession agreement procured by concededly arm's length negotiation may be challenged on antitrust grounds in view of the *Noerr-Pennington* doctrine.

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v.

GREATER HOUSTON TRANSPORTATION COMPANY D/B/A YELLOW CAB COMPANY AND THE CITY OF HOUSTON,
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BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

COUNTERSTATEMENT OF THE CASE

The ground passenger departing newly built Houston Intercontinental Airport in 1969 was met with atrocious taxicab service. Cab unavailability, over-charging, flat-rating, refusal to provide short trips, and general con-

fusion reigned. (Appendix A). The situation prompted Greater Houston Transportation Company ("Yellow Cab") to petition the City of Houston to solve the existing problems by entering into an airport taxicab service concession agreement with Yellow Cab. (Appendix A). In early January 1970, the City's Directors of Aviation and Public Service advised the Mayor that the Yellow Cab petition was accurate and that its proposal should be adopted. (Appendix B, C). On January 14, 1970, the Houston City Council, by motion, authorized City officials to negotiate an airport taxicab service concession agreement with Yellow Cab, provided that Yellow Cab permit other taxicab companies to operate under its terms. (Appendix D). The concession agreement was executed on February 11, 1970. In exchange for granting the privilege of serving the airport, the concession imposed considerable obligations upon Yellow Cab, including the provision of adequate cab service, the construction and operation of airport taxicab starter facilities, the employment of taxicab starters and the payment to the City of monthly fees. The concession was by its terms non-exclusive, and in fact provided for Yellow Cab to permit all other taxicab companies in Houston to operate under its terms. On February 11, 1970, Yellow Cab extended written offers to all other Houston taxicab companies to operate under the concession. (Appendix E). Since then, most Houston taxicab companies have accepted the offer and therefore serve the airport on equal terms and conditions.

It is conceded by Petitioners that Yellow Cab's petitioning efforts were "undertaken at arm's length" with the City. Petitioners' Fifth Circuit Brief, 46. There is neither allegation nor evidence that Yellow Cab employed false

information, bribery or any other type of "dirty tricks" in its petitioning effort. Petitioners do not contend that Yellow Cab in any way blocked their access to the municipal political forum or impaired their ability to seek a concession agreement. There is no evidence of any predatory or exclusionary intent on the part of Yellow Cab.

Notwithstanding these undisputed facts, Petitioners filed this action, contending that Yellow Cab's successful petitioning efforts effected a restraint of trade made unlawful by federal antitrust law. The district court properly entered summary judgment in favor of Yellow Cab on the grounds that Yellow Cab was privileged to petition the City for the concession. See Petitioners' Brief, Appendix B. The Fifth Circuit unanimously affirmed. See Petitioners' Brief, Appendix A.

REASONS FOR DENYING THE WRIT

The courts below properly recognized that Yellow Cab was privileged, under the well settled *Noerr-Pennington* antitrust doctrine, to petition the City of Houston for an airport taxicab concession. Yellow Cab exercised its constitutional right to persuade the government to take a particular course of action. Petitioners had the same right, and there is no evidence that Yellow Cab prevented Petitioners from exercising this right. Yellow Cab is not subject to antitrust liability simply because its petitioning was more successful than that of Petitioners'. Furthermore, there is no exception to *Noerr-Pennington* applicable to this case. *Noerr-Pennington* immunity is not dependent upon the existence of sovereign immunity conferred by *Parker v. Brown*, 317 U.S. 341 (1943). No so-called "commercial exception" applies because even if such an exception were viable it would be inapposite here.

I. Yellow Cab's Petitioning Is Protected From Antitrust Challenge By The *Noerr-Pennington* Doctrine.

Petitioners allege nothing more than that Yellow Cab has successfully secured a concession contract from the City of Houston. However, private efforts to secure even anticompetitive government action do not violate the Sherman Act, as a matter of law. *Eastern R.R. Presidents' Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961); *United Mine Workers v. Pennington*, 381 U.S. 657 (1965).

Yellow Cab was fully entitled to petition for and operate under the concession, because

> *no violation* of the [Sherman] Act can be predicated upon mere attempts to influence the passage or enforcement of laws.

Noerr, supra, 365 U.S. at 135 (emphasis added).

> Very simply, efforts to influence public officials do not violate the antitrust laws *even though intended to eliminate competition*. Such conduct is *not illegal*, either standing alone or as part of a broader scheme, itself violative of the Sherman Act.

Pennington, supra, 381 U.S. at 670 (emphasis added).

The doctrine of these two cases, the so-called "*Noerr-Pennington* doctrine", holds that:

> The right to petition administrative agencies for favorable action is outside the perimeter of activity proscribed by antitrust laws.

American Tel. & Tel. Co. v. Delta Communications Corp., 408 F.Supp. 1075, 1098 (S.D. Miss. 1976), *aff'd*, 579 F.2d 972 (5th Cir. 1978), *cert. denied*, 444 U.S. 926 (1979).

Noerr-Pennington is bottomed upon the constitutional right of petition and the need to assure "uninhibited access to government policy makers." *Mid-Texas Communication Systems, Inc. v. American Tel. & Tel. Co.*, 615 F.2d 1372, 1383 (5th Cir. 1980), *cert. denied*, 449 U.S. 912 (1980). This right of uninhibited access "extends to all departments of the Government." *California Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972).

The leading authorities on federal antitrust law have concluded that the *Noerr-Pennington* doctrine means as follows:

> A specific purpose to secure anticompetitive governmental action and to burden rivals cannot itself make activities wrongful. Monopolists or collaborators are privileged to pursue their private and selfish objectives through legislation, adjudication, or executive and administrative machinery.

Areeda and Turner, *Antitrust Law*, Section 201 (1978).

> *It is accepted that everyone is entitled to petition the government for legislation serving his selfish interests* . . . And equally privileged are efforts to influence . . . administrative rulings which have immediate operative effects—for example, making grants, *awarding or retracting franchises*, licenses or permits.
>
> * * *
>
> *The absence of an antitrust violation is most obvious when the petitioner actually obtains the result he seeks*, and clearest in the case of legislation. What-

> ever the petitioner's objective, the enactment declares the public interest as perceived by the legislature. To be sure, the legislature may be mistaken or unaware of the consequences of its actions, or it may be responding to political pressures not truly reflecting "the public interest", *but the antitrust court may not reappraise the legislature's assessment of the public welfare. Government is its own judge of how much competition is desirable. If a statute excludes everyone but the monopolist from a market, the monopolist cannot himself be faulted.* Nor is there fault for requesting or otherwise promoting the legislation . . . the antitrust court must recognize that any harm to competition results from government decision rather than from the private action that may have induced official action.

Areeda and Turner, *Antitrust Law*, Section 202 (1978) (emphasis added).

This case is squarely governed by the application of *Noerr-Pennington* in the cases of *In re Airport Car Rental Antitrust Litigation*, 521 F.Supp. 568 (N.D. Cal. 1981), *aff'd*, 693 F.2d 84 (9th Cir. 1982), *cert. denied*, 462 U.S. 1133 (1983) and *BusTop Shelters, Inc. v. Convenience & Safety Corp.*, 521 F.Supp. 989 (S.D.N.Y. 1981).

In *In re Airport Car Rental Antitrust Litigation,*

> a number of car rental companies complained in substance that [Hertz and Avis] engaged in joint activities to influence airport authorities to exclude competing companies from airports in violation of Section 1 and 2 of the Sherman Act.

In re Airport, supra, 521 F.Supp. at 570. The district court granted defendants' *Noerr-Pennington* motion for summary judgment, noting that the challenged conduct

"falls outside the scope of the Sherman Act." *In re Airport, supra,* 521 F.Supp. at 577.

Likewise, in *BusTop Shelters,* plaintiff bus stop shelter franchisee brought an antitrust action challenging a city's award of an exclusive franchise to a competitor. The district court granted defendants' *Noerr-Pennington* motion to dismiss:

> If BusTop's allegations are assumed to be true, as they must be on a motion to dismiss . . . they nevertheless seem to fall squarely within the antitrust exemption carved by *Noerr* and *Pennington.* The specific acts of which BusTop complains, as outlined above, consist of alleged pressure on governmental officials, . . . as well as the actions allegedly taken by governmental officials in response to that pressure, such as . . . denying a franchise to one company while awarding it to another. . . . Nothing could be more clearly a joint effort to influence public officials, which is precisely what *Noerr* and *Pennington* exclude from the coverage of the Sherman Act.

BusTop Shelters, supra, 521 F.Supp. at 994.

In re Airport and *BusTop Shelters, supra,* though dispositive of Petitioners' claims, do not stand alone. Time and again, complaints similar to those of Petitioners' here have been summarily dismissed on *Noerr-Pennington* grounds. Each case involved—as here—a challenged effort by defendant to secure or protect a concession granted by a governmental agency.

In each case, the result is the same: the vindication of a defendant's right to petition government, as articulated by *Noerr-Pennington. See, e.g., Hopkinsville Cable TV, Inc. v. Pennyroyal Cablevision, Inc.,* 562 F.Supp. 543 (W.D. Ky. 1982) (summary judgment on *Noerr-Penning-*

ton grounds entered for defendant despite rival plaintiff's claim that defendant secured exclusive municipal service franchise); *Huron Valley Hospital v. City of Pontiac,* 466 F.Supp 1301 (E.D. Mich. 1979), *vacated and remanded on other grounds,* 666 F.2d 1029 (6th Cir. 1981) (summary judgment on *Noerr-Pennington* grounds entered for defendants despite plaintiff's complaint that defendants conspired to prevent plaintiff from securing license to operate hospital); *Metro Cable Co. v. CATV of Rockford Inc.,* 516 F.2d 220 (7th Cir. 1975) (dismissal on *Noerr-Pennington* grounds affirmed despite plaintiff's claim that defendant's exclusive cable television franchise precluded plaintiff from competition); *Subscription Television, Inc. v. Southern California Theatre Owners Ass'n.,* 576 F.2d 230 (9th Cir. 1978) (directed verdict for defendant on *Noerr-Pennington* grounds affirmed despite plaintiff's claim that defendant's lobbying was intended to interfere with plaintiff's proposed competitive activity); *Mark Aero, Inc. v. Trans World Airlines, Inc.,* 580 F.2d 288 (8th Cir. 1978) (failure to dismiss on *Noerr-Pennington* grounds held error on appeal despite plaintiff's allegations that defendants induced city officials to take anticompetitive action toward plaintiff); *Franchise Realty Interstate Corp. v. San Francisco Local Joint Executive Bd. of Culinary Workers,* 542 F.2d 1076 (9th Cir. 1976), *cert. denied,* 430 U.S. 940 (1977) (dismissal on *Noerr-Pennington* grounds affirmed despite plaintiff's allegations that defendant opposed the grant of city permits to plaintiff in order to eliminate competition); *Central Bank of Clayton v. Clayton Bank,* 424 F.Supp. 163 (E.D. Mo. 1976), *aff'd,* 553 F.2d 102 (8th Cir. 1977), *cert. denied,* 433 U.S. 910 (1977) (dismissal on *Noerr-Pennington* grounds of plaintiff's complaint that defendants' opposition to plaintiff's competitive bank charter applica-

tion precluded plaintiff from competition); *Sun Valley Disposal Co. v. Silver State Disposal Co.*, 420 F.2d 341 (9th Cir. 1969) (*Noerr-Pennington* summary judgment affirmed despite plaintiff's claim that defendant's exclusive franchise for garbage pick-up resulted in termination of plaintiff's business).

Because Petitioners' complaint alleges that Yellow Cab did no more and no less than successfully petition the City of Houston for a concession and because there is no allegation that Yellow Cab prevented Petitioners' from doing likewise, the conduct alleged by Petitioners falls squarely within the ambit of *Noerr-Pennington's* protection. The writ should therefore be denied.

Unable to avoid the wholly dispositive impact of *Noerr-Pennington*, Petitioners seem to imply that certain limitations* to the doctrine apply here. That is simply not the case, as will be demonstrated in part II below.

II. Petitioners' Sole Question Presented Relating To Yellow Cab Is Not Worthy Of Review By This Court.

Petitioners raise but one narrow question for review by this Court relating to Yellow Cab's conduct: can a party invoke *Noerr-Pennington* to immunize petitioning for commercial government activity which itself is not entitled to *Parker v. Brown* immunity? This narrow question is not worthy of review by this Court for 3 independent reasons.

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* Petitioners did not plead below nor do they argue now that the "sham" exception to *Noerr-Pennington* is applicable. See *Noerr, supra*, 365 U.S. at 144. Nor could they in view of the facts involved. Petitioners have also abandoned any claim that a "co-conspirator" exception to *Noerr-Pennington* is applicable to the facts of this case.

A. The City of Houston is *Parker v. Brown* Antitrust Immune and Therefore Yellow Cab's Petitioning Efforts are *Noerr-Pennington* Antitrust Exempt.

Petitioners implicitly concede that *Noerr-Pennington* would protect even commercial petitioning so long as the activity secured thereby is entitled to *Parker v. Brown* immunity. That is precisely the case here. As both courts below correctly held, the City of Houston is immune from antitrust liability in this case on *Parker v. Brown* grounds. That being the case, Yellow Cab is likewise exempt.

B. Yellow Cab's *Noerr-Pennington* Antitrust Exemption is not Dependent upon the City of Houston's *Parker v. Brown* Immunity.

Even if the City of Houston has no *Parker v. Brown* protection, Yellow Cab is entitled to *Noerr-Pennington* protection. The underpinnings of the *Parker v. Brown* doctrine are completely unrelated to those of the *Noerr-Pennington* doctrine. *See, In re Airport Car Rental Antitrust Litigation, supra,* 521 F.Supp. at 584. They are "two separate doctrines." *New Mexico v. American Petrofina,* 501 F.2d 363, 368 (9th Cir. 1974). *Parker v. Brown* sovereign immunity is predicated upon governmental status; *Noerr-Pennington* petitioning immunity is predicated largely upon the First Amendment. Thus, *Noerr-Pennington* petitioning immunity neither presupposes nor depends upon *Parker v. Brown* sovereign immunity. *Greenwood Utilities v. Mississippi Power Co.,* 751 F.2d 1484 (5th Cir. 1985). Indeed, *Noerr-Pennington* immunity may attach even though *Parker v. Brown* immunity is absent. *See, e.g., In re Airport Car Rental Antitrust Litigation, supra,* 693 F.2d at 87. The basis for this mutual independence is compelling:

> Of course, the governmental action may itself be invalid because it is unconstitutional or, in the case of state legislation, because it is inconsistent with federal law. But the fact that a statute turns out to be invalid cannot be grounds for attaching liability to petitioning for it; to hold that one petition at his peril would unduly burden the constitutional privilege of petitioning.

Areeda and Turner, *Antitrust Law*, Section 202 (1978).

> The *Noerr-Pennington* doctrine is based on the first amendment right of petition and such a right would be considerably chilled by a rule which would require an advocate to predict whether the desired legislation would withstand a constitutional challenge in the courts and to expose itself to a potential treble damage antitrust action based on that prediction. The fact that the legislative action sought is subsequently declared unconstitutional does not remove the immunity from the antitrust laws created by the *Noerr-Pennington* doctrine. As noted in *Franchise Realty, supra,* "We know of no case that holds that joint action which succeeds in persuading a public body to make an erroneous decision can give rise to a cause of action under the Sherman Act." 542 F.2d at 1079, n.2.

Subscription Television, Inc., supra, 576 F.2d at 233-234.

The facile notion that *Parker* immunity and *Noerr* immunity are coextensive and thus mutually presuppositive is dangerous in its simplicity. "Whatever appeal such a symmetrical interpretation might have, it is, as discussed above, incompatible with First Amendment protection extended to activities constituting commercial speech.

Moreover, the symmetry is more apparent than real." *In re Airport Car Rental Antitrust Litigation, supra,* 521 F.Supp. at 583.

C. No "Commercial Exception" to Yellow Cab's *Noerr-Pennington* Antitrust Exemption Exists.

Petitioners seem to suggest that *Noerr-Pennington* would apply but for the allegedly "commercial" aspects of the activity in question. Petitioners apparently seek to invoke a so-called "commercial exception" to *Noerr-Pennington,* an exception never recognized by this Court or a majority of the lower federal courts.

This Court has ruled that *Noerr-Pennington* protects not only political petitioning, but also petitioning to promote business and economic interests.

> We conclude that it would be destructive of rights of association and of petition to hold that groups with common interests may not, without violating the antitrust laws, use the channels and procedures of state and federal agencies and courts to advocate their causes and points of view respecting resolution of their *business and economic interests vis-a-vis their competitors.* (emphasis added).

California Motor Transp. Co., supra, 404 U.S. at 510-511.

Lower federal courts have likewise recognized that *Noerr-Pennington* is "not limited to political or policy matters." *In re Airport Car Rental Antitrust Litigation, supra,* 521 F.Supp. at 578. *Accord: Greenwood Utilities, supra,* 751 F.2d 1484 ("We reject any notion that there should be a commercial exception to *Noerr-Pennington* . . ."); *Reamco, Inc. v. Allegheny Airlines,* 496 F.Supp.

546, 556, n. 6 (S.D.N.Y. 1980); *In re Airport Car Rental Antitrust Litigation, supra,* 693 F.2d at 87 ("there is no commercial exception to *Noerr-Pennington*"). *See also, Metro Cable, supra,* 516 F.2d at 229-30; *Sun Valley Disposal Co., supra,* 420 F.2d at 342-43.

Even if a so-called "commercial exception" were viable, it would not apply to this case because the political process was clearly invoked by the petitioning involved. It has been squarely held that efforts to influence municipal government with respect to airport access rights are purely political. In *Mark Aero, Inc., supra,* 580 F.2d 288, plaintiff charter air taxi operator sued several major airlines because of their opposition to plaintiff's efforts to re-open and use an abandoned municipal airport in competition with defendants. The Eighth Circuit dismissed the action and held:

> [plaintiff] invites us to resolve the matter through the application of the antitrust acts. We decline to do so and order the case dismissed. This is a *governmental problem,* to be solved by the electorate through its proper officials. There is no warrant for our intervention on plaintiff's theory that the antitrust statutes control.

Mark Aero, supra, 580 F.2d at 290 (emphasis added).

Similarly, in *Metro Cable, supra,* 516 F.2d at 220, the Seventh Circuit rejected the applicability of a "commercial exception" to *Noerr-Pennington* in the context of litigation challenging a municipality's award of a cable television franchise. The court noted:

> City Council was a legislative body, acting as such, and the conduct challenged here thus occurred in a political setting.
>
> * * *

> As a legislative body, it and its committees operate in a political setting. Its members are subject to lobbying and other forms of ex parte influence which *Noerr* recognized are a part of the political process and means by which the people are entitled to communicate with their representatives.

III.

CONCLUSION

By Petitioners' own admission, Yellow Cab has done no more and no less than successfully conduct "arm's length contractual negotiations" with the City of Houston. It is not alleged, nor is there any evidence submitted, that Yellow Cab blocked Petitioners' access to the same municipal political process.

> Taking plaintiff's claim at face value, the defendants conspired to influence the airport authorities to exclude plaintiff from access to the on-airport market. Access to that market is the relevant area of competition in this case, and plaintiff has offered no facts to show that it was barred from competing with defendants for contracts or leases with airport authorities, albeit under conditions not to its liking.
>
> * * *
>
> Plaintiff has offered no facts in support of a claim of denial of access to the airport authorities.

In re Airport Car Rental Antitrust Litigation, supra, 521 F.Supp. at 574.

Petitioners seek the intercession of federal authority into the municipal political process, under the rubric of the antitrust laws, in the hope of turning a political disappointment into an economic windfall. This cannot be

done. "The proscriptions of the [Sherman] Act, tailored as they are for the business world, are not at all appropriate for application in the political arena". *Noerr, supra,* 365 U.S. at 141. In short,

> the Sherman Act, as interpreted by *Noerr,* simply does not penalize as an antitrust violation the petitioning of a government agency.

Coastal States Mktg., Inc. v. Hunt, 694 F.2d 1358, 1366 (5th Cir. 1983).

For these reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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September 18, 1985

APPENDIX A

GREATER HOUSTON TRANSPORTATION COMPANY
1406 Hays St., Houston, Texas 77009, 222-1481

Stanley Danburg
President

December 31, 1969

Honorable Mayor and City Council
City of Houston, Texas
City Hall

Gentlemen:

Since the Houston Intercontinental Airport opened in June, 1969, taxicab service there, as supplied by all taxicab companies, has not been satisfactory. This company has devoted considerable study to this problem and its possible solutions. One of the major stumbling blocks to the lack of successful cab service has been the absence of taxicab starters. Some of the problems resulting out of this deficiency have been over-charging, flat-rating, refusal to take short trips and a general lack of true public service. The poor impression to visitors of Houston that this creates is far short of exemplifying the type of city we are.

We are convinced that the only efficient means of providing the required service is the means employed by nearly every other major city in the nation—a concession contract between the city and a responsible, major taxicab company equipped for and capable of supplying the service needed. This proposal has been discussed in some detail and this letter arises out of meetings held with both

the Department of Aviation and the Department of Public Service, City of Houston.

Accordingly, Greater Houston Transportation Company proposes to contract with the City of Houston to supply taxicab service at the Houston International Airport upon the following terms:

1. The company will, at its own expense, maintain full time starters at both existing terminal buildings and future terminals to be built. A reasonable estimate of the cost of maintaining these starters for the two existing terminals is $36,000 per year at the present time.

2. The company will pay to the City of Houston the same compensation per passenger as is payed by the present Airport Ground Transportation concession (approximately thirty-three cents per head). This is the average fee per passenger carried by the Airport Ground Transportation Company at this time and Greater Houston Transportation Company proposes to pay the same. If the city's average fee per passenger carried by the Airport Ground Transportation Company should increase, the fee payed by Greater Houston Transportation Company would increase accordingly.

3. Not withstanding the terms of the last paragraph, Greater Houston Transportation Company will guarantee a payment to the City of Houston each month of not less than $5,000. This guarantee will immediately give the City of Houston approximately 50% more income than it now gets from taxicabs (based on figures obtained from the City of Houston, Depart-

ment of Aviation). This department estimates income at approximately $36,000 a year at the present time.

4. The company proposes that this contract shall extend for a term of ten years from the date of its execution.

5. The company does not propose to charge a flat rate from the airport to points in Houston. All trips will be made on meter charges, as required by the City Taxicab Ordinance.

6. Our company proposes two-way radio communication between terminals and between the airport and our central dispatching system in order to assure adequate taxicab service at all times.

7. Only taxicabs operated under taxicab airport concession contract (as outlined by this proposal) shall be permitted to pick up passengers at any airport operated by the City of Houston. (Of course, all taxicabs are entitled to discharge passengers at the airport).

8. The company will at all times keep available for airport taxicab service the necessary number of taxicabs, fully equipped with radios and other equipment required by the Taxicab Ordinance of the City of Houston and will man these taxicabs with personnel licensed under the Taxicab Ordinance of the City of Houston.

Under the present conditions with 88 cab spaces and the lack of proper starters, many cabs sit two and three hours waiting for trips, while at peakload periods too few cabs exist. The result of this poor utilization of taxicab permits hurts public service in the rest of the City of Houston.

Only a major taxicab company such as the Greater Houston Transportation Company could possibly qualify to make such a contract as herein proposed. It is necessary that between 300 and 400 taxicabs be operated in order to assure enough cabs available for peakload periods. During week days between 250 to 300 trips go out of the Houston Intercontinental Airport by cab, squeezed into the peak periods of 7 A.M. to 7 P.M. This 40 to 50 trips per hour requires 300 and 400 operating cabs, as any company only operates 20% to 25% of it cabs at the airport at any given time. In addition, certain peak periods, such as the Homebuilders Convention, could require from 150 to 200 cabs per hour. Looking down the road at jumbo jets, the taxicab requirement could even grow greater. Since 500 permits are owned and/or operated by this company out of 689 permits issued by the City of Houston and the remaining permits are scattered among 16 companies (7 of which are one-cab companies), it is clear that only the Greater Houston Transportation Company can assure and furnish to Houston first-class taxicab service.

Through a cab contract of the nature herein proposed, Greater Houston Transportation Company can assure the City of Houston better taxicab service at lower costs to the traveling public. Through the use of a properly trained taxi starter, much of the traveling public will share rides in cabs to Downtown, South End, and other major destinations. This sharing of rides and the resulting lower fares per person will come back to help our city in many ways.

On January 18, 1970, Houston will enjoy the largest convention ever held in our city. It would be most advantageous to the city and our company for this arrangement to be completed before these visitors begin arriving and we are therefore asking that this contract be expedited if possible.

Yours very truly,

/s/ STANLEY DANBURG
Stanley Danburg

CC: Mr. Joe Foster—Department of Aviation
Mr. Tom Tyson—Public Service Department

SD/olr

APPENDIX B

CITY OF HOUSTON
Inter Office Correspondence

To: Mayor Louie Welch
Through the City Secretary

From Joseph A. Foster, Director
Department of Aviation

Date January 6, 1970

Subject Taxicab Proposal—Houston
Intercontinental Airport

I have reviewed the attached proposal of Mr. Stanley Danburg, President of Greater Houston Transportation Company, to provide taxicab service at the Houston Intercontinental Airport.

Mr. Danburg's appraisal of the taxicab situation at the Airport is an accurate one and his proposal is, in my opinion, the only solution to the problem. Under the present arrangement the Department of Aviation has no control over the type and availability of taxicab service from the Airport. There is no obligation or responsibility on any of the various companies to provide the service. Since the service is now provided by a variety of cab owners, it is difficult to identify the owners of cabs responsible for over-charging customers, failing to take them to nearby destinations, and other frequent complaints we receive from the public.

It is impossible to prepare and have executed by both parties an agreement for this service prior to the commencement of the Home Builders Convention.

The Director of Aviation recommends:

1. That City Council, by motion, adopt Mr. Danburg's proposal and authorize the immediate commencement of the service in accordance with the terms of the proposal pending completion of a formal agreement.

2. That the Director of Aviation and the City Legal Department negotiate an agreement with Greater Houston Transportation Company, substantially in accordance with the attached proposal, obtain the execution thereof by Greater Houston Transportation Company, and submit the same to City Council for approval.

Respectfully,

/s/ JOSEPH A. FOSTER
Director
Department of Aviation

JAF:CFW:mml
Attachment

APPENDIX C

CITY OF HOUSTON
Inter Office Correspondence

To: Mr. Gene Gatlin
Executive Assistant
Mayor's Office

From Thomas B. Tyson, Director
Public Service Department

Date January 7, 1970

Subject Proposal by Greater Houston Transportation Co. to provide exclusive taxicab service from Intercontinental Airport.

Following is recommendation on Greater Houston Transportation Company proposal.

Problems concerning taxicabs have existed ever since the opening of the Intercontinental Airport. The principal ones being excessive number of taxicabs on stands, activities of drivers on stands during long waits for trips, flat rating and controversies between taxicab and limousine drivers. Several meetings between all parties or groups involved have been held and it was agreed that taxicab starters were needed and the number of taxicabs waiting for trips should be reduced.

The proposal by Greater Houston Transportation Company would provide additional income from taxicabs for the City and would protect it from any loss of revenue due to taxicabs taking business away from the Limousine Operator through more effective competition. The concession agreement would provide taxicab starters and

this should correct many problems that we have been having with taxicabs at the airport. In addition, it should also improve taxicab service to other areas of the city because the concessioner would be required to limit the number of taxicabs at the airport to just that number needed for airport business. Granting of the concession would prohibit other taxicab companies that are now serving the airport from picking up passengers there.

I recommend a concession contract be negotiated with Greater Houston Transportation Company providing provisions covering the following points:

1. Execution of concession contract should not effect jurisdiction of this department over taxicabs. Further, nothing in the concession contract should in any way effect Greater Houston's obligation to provide taxicab service throughout the city.

2. Taxicab dispatchers should be required to keep records on pickups as directed by the Director of Public Service and Aviation Department.

3. Although this concession contract will grant exclusive privilege to picking up passengers at the airport, Greater Houston should be required to allow other companies to pick up provided they pay a reasonable fee to Greater Houston and abide by reasonable rules and regulations of that company.

Respectfully submitted,

/s/ TOM TYSON
Director
Public Service Department

TBT/lm

APPENDIX D

CITY OF HOUSTON
Inter Office Correspondence

To Mayor Louie Welch
Through City Secretary

From Joseph A. Foster, Director
Aviation Department

Date February 4, 1970

Subject Negotiated agreement between City of Houston and Greater Houston Transportation Company for taxicab service at Houston Intercontinental Airport

By Motion No. 70-167, passed the 14th day of January, 1970, City Council authorized the Director of Aviation and the City Attorney to negotiate an agreement with Greater Houston Transportation Company substantially in accordance with its proposal with certain specified requirements. The motion stipulated:

1. That the agreement should not affect the jurisdiction of the Public Service Department over taxicabs nor effect said company's obligation to provide taxicab service throughout the City;

2. That taxicab dispatchers be required to keep records on pickups as directed by the Director of Public Service and the Director of Aviation;

3. That the Greater Houston Transportation Company be required to allow other cab companies to

pick up passengers at the airport provided they pay a reasonable fee to Greater Houston Transportation Company, such fee to be approved by the Director of Public Service, and that such companies abide by reasonable rules and regulations of Greater Houston Transportation Company; and

4. That the regulations under which the starter will work shall be approved by the Director of Aviation and the Director of Public Service.

The attached agreement contains all of the above items except the third one.

The proposal of Greater Houston Transportation Company gave to the City the ability to look to a single company and hold it responsible for providing taxicab service at the airport that would not be possible if the taxicab concessionaire should be required to permit any and all other taxicab operators and companies to operate under the terms of its contract. The concessionaire would be unable to force other taxicab drivers and taxicab companies, that it did not own or employ, to comply with the contractual requirements imposed upon the concessionaire by its contract with the City. In other words, the City would be imposing upon the taxicab concessionaire responsibility for the acts of other taxicab drivers and taxicab companies over which the concessionaire would have no control. In this respect, we have been advised by the City Legal Department that City Council cannot delegate to a private company the authority to establish rules and regulations for the operation of taxicabs on the airport. Section 1(f) of the contract as prepared by the City Legal Department grants the concessionaire the right:

"To allow other taxicab companies operating taxicabs licensed by the City of Houston to operate under this contract by subcontracting with the concessionaire, provided the concessionaire remains at all times fully obligated to perform its contract services at the airport, and provided that no such subcontract shall become effective unless and until it has been approved by the Director of Aviation and the Director of Public Service."

The Director of Aviation recommends:

That City Council enact the attached ordinance authorizing the execution of the attached contract on behalf of the City of Houston.

/s/ JOSEPH A. FOSTER
Joseph A. Foster

JAF:CFW:br
Attach.

APPENDIX E

GREATER HOUSTON
TRANSPORATION COMPANY
1406 Hays St., Houston, Texas 77009, 222-1481

February 11, 1970

Dear Sir:

On the 11th. day of February, 1970 our company entered into a contract with the City of Houston to furnish taxicab service at the Houston Intercontinental Airport.

According to our contract we are granted the right—

> "To allow other taxicab companies operating taxicabs licensed by the City of Houston to operate under this contract by sub-contracting with the Concessionaire, provided the Concessionaire remains at all times fully obligated to perform its contract services at the Airport, and provided that no such sub-contract shall become effective unless and until it has been approved by the Director of Aviation and by the Director of Public Service."

If your company desires to operate its cabs under this contract please notify us at your earliest convenience so that we may discuss this further. If we do not hear from you by February 20, 1970, we will assume that you have no interest in operating under our contract.

Yours very truly,

GREATER HOUSTON TRANSPORTATION COMPANY

By: /s/ STANLEY DANBURG
Stanley Danburg
President

SD/ms

Adams Leasing Co., Inc.
2119 Jensen Dr.
Houston, Texas 77026
Attn: Alfred Adams, President

Allied Cab Company
5919 Brock
Houston, Texas 77023
Attn: Mrs. Glenn Ellyn Smith

Checker Cab Co., Inc.
5707 Edgemoor
Houston, Texas 77036
Attn: Billy Joe Walker, President

Coastal Cab Co.
7802 Helmers
Houston, Texas 77022
Attn: Roy J. Raia

Dudley Cab Co.
2034 Alta Vista
Houston, Texas 77023
Attn: Willie V. Dudley

Garza Shield Cab Co.
420 Redan
Houston, Texas 77009
Attn: Emmett Garza

Hillside Cab Company
8200 Woodward St.
Houston, Texas 77051
Attn: Sammy Fance, Jr.

Jacks Cab Company
3510 Sampson
Houston, Texas 77004
Attn: O. D. Simpson

J & J Leasing Co.
2609 Dowling
Houston, Texas 77004
Attn: John Jenkins

J & L Cab Company, Inc.
2711 Berry Road
Houston, Texas 77016
Attn: Kathleen Condry, President

J & R Leasing Co.
4503 Dowling
Houston, Texas 77004
Attn: Temple Johnson, President

Riverside Cab Company
2321½ Rosewood
Houston, Texas 77004
Attn: Winston Jones

Safety Cab Company
10406 Chadwick
Houston, Texas 77029
Attn: Carl Schroeder

Sunnyside Cab Company
4621 Bricker
Houston, Texas 77051
Attn: Paul Ballard

Sunset Taxi Line
3906 Daphne
Houston, Texas 77021
Attn: Ervin Butler

Texas Cab Company
2703 Tidewater
Houston, Texas 77045
Attn: James T. Smith, Jr.

Triangle Cab Company
2519 McGowen
Houston, Texas 77004
Attn: D. J. Smith & Temple Johnson